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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 13th May 2015

No. 4197—IR(ID)-35/2015-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2014 in Industrial Disputes Case No. 47/2012 of the Presiding Officer, Labour Court, Bhubaneswar wherein the industrial dispute between the management of the Mayurbhanj Metals Pvt. Ltd., At/P.O. Bharandia, Dist. Mayurbhanj and its workman Shri Sapan Kumar Rout was field by the workman under Section 2-A(2) of I.D. Act, 1947 for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 47 OF 2012 U/s 2-A (2)

Dated the 31st December 2014

Present :

Shri Saroj Kumar Sahoo, O.S.J.S. (Jr. Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

Managing Director,
Mayurbhanj Metals Pvt. Ltd.,
At/P.O. Bharandia-Badamitalia,
P.S. Rairangpur,
Dist. Mayurbhanj.

.. First Party—Management

And

Shri Sapan Kumar Rout,
S/o Shri Narendra Rout,
At/P.O. Anladuba,
P.S. Rairangpur,
Dist. Mayurbhanj, Odisha.

.. Second Party—Workman

Appearances :

Shri C. S. Dash, Auth. Representative	. . For the First Party—Management
Shri Sapan Kumar Rout	. . For the Second Party—Workman

A W A R D

The case has been initiated on an application filed by the second party workman under Section 2-A(2) of I.D. Act, 1947. The case of the second party workman is that he was an employee under the first party management. He was illegally retrenched by the management for which on 15th July 2010, he had filed a petition before the District Labour Officer, Baripada. He had served under the first party management from 31st October 1996 till the 11th October 2010 when he was retrenched/terminated by the first party management without following the provisions of I.D. Act 1947. Due to pendency of the petition filed by the second party workman before D.L.O., Baripada for a period of more than one and half year, he has filed the present application before this Court for appropriate relief. After a long time the D.L.O., Mayurbhanj has submitted failure report to the Government vide its letter No. 582, dated the 18th February 2012. Till now no reference has been received by this Court. Before dismissal of the second party workman the first party management conducted a departmental enquiry against the second party workman arbitrarily basing on a false charge sheet. No proper opportunity was given to the second party workman to defend his case during the departmental enquiry. The findings arrived in the domestic enquiry was one sided. The second party workman was dismissed without any fault and without payment of retrenchment compensation or notice pay. Hence he has filed the present petition with a prayer for his reinstatement of service along with Rs. 1,44,000 towards back wages for the period from 12th October 2010 to 31st October 10-2012.

2. In pursuance of notice issued by the Court, the first party management entered its appearance in Court and filed its written statement. The case of the first party management is that the application filed by the second party workman is not maintainable in the eye of law. The second party workman served as Supervisor (Mechanical) and does not come within the definition of workman under Section 2(s) of I.D. Act, 1947. There is no industrial dispute in between the management and the workman, which is to be adjudicated by this Court. On 15th April 2010 the second party workman was in 'C' shift duty at Foundry Production and there was only two heats in place 7 heats causing a heavy loss to the production. There was break down of Bucket Elevator around 11.30 P.M. when the necessary spare parts for repairing was available but the second party workman did not make any effort for repairing of the machine as early as possible. On 20th April 2010 at about 10.00 P.M. he also abused one of his co-employee namely Debendra Singh in obscene language and assaulted him causing injuries on his person inside the factory premises in presence of the other workmen. For the negligence in duty and his indecent behaviour he was charge sheeted. Thereafter, a domestic enquiry was conducted against the second party workman on 21st August 2010 which was concluded on 22nd August 2010. The second party workman was duly noticed about the domestic enquiry in which he had participated. He has cross examined the witnesses examined on behalf of the management and his witnesses were also examined during the enquiry. After the conclusion of the domestic enquiry, the Enquiring Officer had submitted this report finding the second party workman guilty and thereafter a show cause notice was issued to the second party workman for his termination. After receipt of the show cause from the second party workman, and considering

the same, the second party workman was dismissed from service . Sufficient opportunity was given to the second party workman to defend his case with the assistance of co-worker and the first party management has conducted the domestic enquiry following the procedure established by law and it was just and fair. The termination of the second party workman from his service by the first party management is legal and justified and that the second party workman is not entitled to any relief.

3. In view of the pleadings of the parties, the following issues are framed :—

ISSUES

- (i) "Whether the action of the management of M/s Mayurbhanj Metals Pvt. Ltd., Rairangpur, Mayurbhanj in terminating the services of Shri Sapan Ku. Rout, Ex-Supervisor Grade S-1 (Mechanical) with effect from the 11th October, 2010 is legal and/or justified ?
- (ii) If not to what relief Shri Rout is entitled ?"

4. The second party workman is examined as W.W.1 and Exts.1 to 6 are marked on his behalf. Ext.1 is the photo copy of Letter No. 582, Dt. 18th February 2002 issued by the Conciliation Officer-cum-D.L.O., Mayurbhanj, Baripada to the parties along with failure report. Ext.2 is the copy to the petition Dt. 18th July 2011 filed by the second party workman before the D.L.O., Baripada. Ext.3 is the photo copy of the letter of appointment, Dt. 31st october 1996 issued by the first party management in favour of the second party workman. Ext.4 is the photo copy of confirmation of appointment letter Dt. 18th May 1998 issued by the first party management in favour of the second party workman. Ext.5 is the photo copy of letter of promotion of the second party Dt. 9th April 2006. Ext.6 is the photo copy of show cause notice issued by the first party management to the second party workman Dt. 11-10-2011. On the other hand two witnesses are examined on behalf of the first party management and Exts.A to U are marked on behalf of the management.. M.W.1 is the Personnel Manager of the first party management and M.W.2 is the Enquiring Officer in respect of the domestic enquiry conducted against the second party workman. Ext.A is the copy of show cause notice Dt. 16-4-2010 issued to the second party workman by the management. Exts.B and C are the photo copies of letters Dt. 21-4-2010 and 8-6-2010 issued by the management to the second party. Exts.D and E are the photo copies of the reply submitted by the second party on 11-6-2010 and 15-7-2010. Exts.F to L are the photo copies of letters Dt. 16-7-2010, 21-7-2010, 24-7-2010, 5-8-2010, 16-8-2010 and 18-8-2010 respectively issued to the second party workman by the first party management. Ext.M is the photo copy of the enquiry report Dt. 2-9-2010. Ext.N is the photo copy of the enquiry file. Ext.P is the photo copy of letter Dt. 18-9-2010 issued to the second party by the first party management. Ext.Q is the photo copy of show cause submitted by the second party workman. Ext.R is the letter Dt. 4-10-2010 of the management to the second party. Ext.S is the termination notice issued by the first party management to the second party. Ext.T is the photo copy of payment voucher Dt. 16-9-2010. Ext.T/1 is the photo copy of receipt executed by the second party. Ext.T/2 is the photo copy of the payment voucher. Ext.T/3 is the photo copy of the money receipt executed by the second party on 22-8-2010. Ext.U is the photo copy of show cause notice issued to the second party workman on 3-5-2010 asking him to file his show cause why his service shall not be terminated.

FINDINGS

5. *Issue Nos. (i) & (ii)*—For the sake of convenience and to avoid repetition both the issues are taken up together for discussion. The second party workman has filed the present petition under Section 2-A(2) of I.D. Act 1947. In his statement of claim he has mentioned that he was serving under the first party management from 31-10-1986 but on 11-10-2010 he was illegally terminated from his service. It is also alleged that such termination was without complying the provisions of Industrial Disputes Act 1947 by the first party management. At paragraph 5 of his statement claim he has also mentioned that the domestic enquiry conducted against him arbitrarily which was based on a false charge sheet. He has also alleged that no proper opportunity was given to him to defend himself in the domestic enquiry and the finding was one sided. W.W. 1 in paragraph 3 of his affidavit evidence deposed that the domestic enquiry was conducted against him arbitrarily basing on a false and fabricated charge sheet. On the other hand both the witnesses examined on behalf of the management testified that after due notice to the second party workman a domestic enquiry was conducted against the second party workman in which he was found guilty and thereafter he was dismissed from his service. They also deposed that proper opportunity was given to the second party workman to defend his case during the domestic enquiry. M.W.1 is the Personnel Manager of the first party management. In his evidence he deposed that on 16-4-2000 an explanation was called for from the second party workman due to his negligence in duty. At paragraph 5 of his evidence, he also deposed that on 21-4-2010 a suspension order was issued to the second party for his misconduct, i.e. for assault and abuse to Shri Debendra Singh inside the factory premises in presence of the co-workers. Ext.A is the show cause notice Dt. 16-4-2010 and Ext.B is the suspension order Dt. 21-4-2010. Exts.D and E are the show causes filed by the second party workman Dt. 11-6-2010 and 15-7-2010 respectively. Ext.F is the letter (charge sheet) Dt. 16-7-2010 issued to the second party for domestic enquiry, when the explanation/show cause submitted by the second party workman was not satisfactory to the management. Ext.K is the photo copy of the letter Dt. 16-8-2010 relating to the date of enquiry and appointment of Presenting Officer of the management and the Enquiry Officer Shri A. K. Mitra. Ext.L is the notice for enquiry Dt. 18-8-2010 issued to the second party workman which has been proved by M.W.1. M.W.2 is the Enquiring Officer. In his evidence he deposed that after his appointment as Enquiring Officer and notice issued to the second party workman he started his enquiry on 21-8-2010. He further deposed that during the enquiry the documents relied on by the management were duly served on the second party and the second party has cross-examined the witnesses examined on behalf of the management. It is clear from Ext.F the notice Dt. 16-7-2010 issued to the second party workman that he was allowed to appoint a representative to represent him during the enquiry. Ext.M is the copy of the enquiry report submitted by the Enquiring Officer which has been proved by M.W.1. It is also clear from Ext.M that before commencement of enquiry the Enquiring Officer had properly explained the procedure to be followed during enquiry to both parties. It transpires from Ext.N the photo copy of the enquiry proceeding Dt. 21-8-2010 that one Mr. Majhi, a co-worker of the second party workman was present along with the second party workman during enquiry on 21-8-2010 and 22-8-2010 and in his presence the witnesses of the parties were examined and cross-examined. On perusal of the enquiry file Ext.N it is clear that no objection was raised by the second party workman to the enquiry conducted by the Enquiring Officer, during the enquiry proceeding. It is also clear from Ext.M the enquiry report and Ext.N the enquiry file that sufficient opportunity was given to the second party workman during the domestic enquiry to defend his case and that the charges levelled against him were proved through legal evidence of the witnesses including the victim of the occurrence. The enquiry report Ext.M is based on the evidence on record during enquiry conducted

by the E.O. and the charges levelled against the second party workman are not false. After examining the ocular testimony of the witnessess examined during domestic enquiry the Enquiring Officer has submitted his report vide Ext.M in which he found the second party workman guilty of the charges. So after scrutinsing the evidence on record it is clear that the domestic enquiry conducted against the second party workman was in accordance with the provisions of law and it was not arbitrary. It is also clear that the charges levelled against the second party workman were proved by legal evidence and it was not based on false hood nor it was fabricated. The irresistible conclusion is that the termination of the services of the second party workman Shri Sapan Kumar Rout by the first party management with effect from 11th October 2010 is legal and justified. In view of such conclusion the second party workman is not entitled for any other relief and reliefs.

The application filed by the second party workman is disposed of accordingly.

Dictated and corrected by me.

S. K. SAHOO
31-12-2014
Presiding Officer
Labour Court
Bhubaneswar

S. K. SAHOO
31-12-2014
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government